

**AUTHORIZED FEDERAL SUPPLY SERVICE  
INFORMATION TECHNOLOGY SCHEDULE PRICELIST  
GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY  
EQUIPMENT, SOFTWARE AND SERVICES**

*Online access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA Advantage!, a menu driven database system.*

*The internet address is [www.gsadvantage.gov](http://www.gsadvantage.gov)*

**GROUP 70, MULTIPLE AWARD IT SCHEDULE**

*FSC CLASS 7030-Term Software Licenses or Perpetual Software Licenses*

*FSC CLASS J070- Maintenance of Software as a Service*

*FSC CLASS U012- Training Courses*

*FSC CLASS D301- Facility Management*

*FSC CLASS D302-Systems Development Services*

*FSC CLASS D306-Systems Analysis Services*

*FSC CLASS D307-Automated Information Systems Services*

*FSC CLASS D308-Programming Services*

*FSC CLASS D310-Backup and Security Services*

*FSC CLASS D311-Data Conversion Services*

*FSC CLASS D313-Computer Aided Design Services and Computer Aided Manufacturing Services*

*FSC CLASS D316-IT Network Management Services*

*FSC CLASS D317-Creation/Retrieval of IT Related Data Services*

*Creation /Retrieval of Other Information Services*

*Creation/Retrieval of IT Related Automated News Services*

*FSC CLASS 399-Other Information Technology Services; Not Elsewhere Classified*

**Manan, LLC. dba Gyrus Systems**

**5400 Glenside Drive, Suite B**

**Henrico, VA 23228-3996**

**Tel: 888-464-9787**

**website: [www.gyrus.com](http://www.gyrus.com)**

**Contract Number: GS-35F-0063W**

**Period Covered by Contract: October 30, 2009 through October 29, 2019 -Option Year 1**

**General Services Administration**

**Federal Acquisition Service**

**Pricelist current through Modification #PS-0010 dated August 20, 2014**

## CUSTOMER INFORMATION

### **1a. Awarded Special Item Numbers under the Contract:**

*Special Item Numbers 132-32, 132-32STLOC, 132-32RC - (Term Software Licenses) - FSC Class 7030*

#### **Large Scale Computers and MicroComputers**

*Operating System Software*

*Application Software*

*Utility Software*

*Communication Software*

*Core Financial Management Software*

*Ancillary Financial Systems Software*

*Special Physical, Visual, Speech, and Hearing Aid Software*

*Special Item Numbers 132-33, 132-33STLOC, 132-33RC – (Perpetual Software Licenses) -FSC Class 7030*

#### **Large Scale Computers and MicroComputers**

*Operating System Software*

*Application Software*

*Utility Software*

*Communication Software*

*Core Financial Management Software*

*Ancillary Financial Systems Software*

*Special Physical, Visual, Speech, and Hearing Aid Software*

*Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics. Software maintenance as a product does **NOT** include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service. Software Maintenance as a product is billed at the time of purchase.*

*Special Item Numbers 132-34, 132-34STLOC, 132-34RC – FSC Class J070 - Maintenance of Software as a Service*

*Special Item Numbers 132-50, 132-50STLOC, 132-50RC – Training Courses for Software Licenses – FSC Class U012*

*Special Item Numbers 132-51, 132-51STLOC, 132-51RC – IT Professional Services*

*FPDS Code D301- Facility Management*

*FPDS Code D 302-Systems Development Services*

*FPDS Code D306-Systems Analysis Services*

*FPDS Code D307-Automated Information Systems Services*

*FPDS Code D308-Programming Services*

*FPDS Code D310-Backup and Security Services*

*FPDS Code D311-Data Conversion Services*

*FPDS Code D313-Computer Aided Design Services and Computer Aided Manufacturing Services*

*FPDS Code D316-IT Network Management Services*

*FPDS Code D317-Creation/Retrieval of IT Related Data Services, Creation/Retrieval of Other IT Services, and Creation/Retrieval of IT Related Automated New Services*

*FPDS Code D399 –Other Information Technology Services, Not Elsewhere Classified*

**Note 1:** All non-professional labor categories must be incidental to and used solely to support hardware, software and/or Professional Services, and cannot be purchased separately.

**Note 2:** Offerors and Ordering Activities are advised that the Group 70- IT Schedule is not to be used as a means to procure services which properly fall under the Brooks Act. These services include, but are not limited to, architectural, engineering, mapping, cartographic production, remote sensing, geographic information systems, and related services. FAR 36.6 distinguishes are not connected or incidental to the traditionally accepted A/E Services.

**Note 3:** This solicitation is not intended to solicit for the reselling of IT Professional Services, except for the provision of implementation, maintenance, integration, or training services in direct support of a product. Under such circumstances the services must be performance by the publisher or manufacturer or one their authorized agents.

**1b. The Lowest Priced Product/Service under each Special Item Number:**

<b>Special Item Number</b>	<b>Product/Service</b>	<b>Lowest Price</b>
<b>132-32, 132-32STLOC, 132-32RC</b>	<b>Training Wizard MX/SST Renewal – Per User License-Student</b>	<b>\$7.20</b>
<b>132-33, 132-33STLOC, 132-33RC</b>	<b>GyrusAim License-Per Student 20,001+</b>	<b>\$4.90</b>
<b>132-34, 132-34STLOC, 132-34RC</b>	<b>GyrusAim and Training Wizard (including: implementation planning, data migration, installations,</b>	<b>\$175.68 hourly rate</b>

	<i>and customizations)</i>	
<i>132-50, 132-50STLOC, 132-50RC</i>	<i>Training Wizard Class per day and GyrusAim Training Class per day</i>	<i>\$1,974.81</i>
<i>132-51, 132-51STLOC, 132-51RC</i>	<i>All labor category titles</i>	<i>\$175.68 hourly rate</i>

2. **GEOGRAPHIC SCOPE OF CONTRACT:** *The Geographic Scope of the Contract will be Domestic Delivery Only. Domestic delivery is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. Territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.*

3. **CONTRACTOR'S ORDERING ADDRESS AND PAYMENT INFORMATION:**

*Manan, LLC. dba Gyrus Systems  
Attn: Viren Kapadia, President & CEO  
5400 Glenside Drive, Suite B  
Henrico, VA 23228-3996*

*Contractors are required to accept credit cards for payments equal to or less than the micro-purchase threshold for oral or written delivery orders. Credit cards will be acceptable for payment above the micro-purchase threshold. In addition, bank account information for wire transfer payments will be shown on the invoice.*

*The following telephone number(s) can be used by ordering activities to obtain technical and/or ordering assistance:*

***Telephone Number: 804-320-1414***

***Manan, LLC. dba Gyrus Systems does not allow dealer participation under this contract.***

4. **LIABILITY FOR INJURY OR DAMAGE**

*The Contractor shall not be liable for any injury to ordering activity personnel or damage to ordering activity property arising from the use of equipment maintained by the Contractor, unless such injury or damage is due to the fault or negligence of the Contractor.*

5. ***Data Universal Numbering Systems (DUNS): 830344078***

5a. ***Tax Identification Number (TIN): 26-4522132***

5b. ***Business Size: Small Minority Owned Business***

5c. ***CAGE Code: OVA21***

5d. ***Manan, LLC. dba Gyrus Systems is registered within the System for Award Management (SAM).***

**6. WARRANTY/GUARANTEE:**

<b><i>Special Item Numbers</i></b>	<b><i>Warranty/Guarantee</i></b>
<i>132-32, 132-32STLOC, 132-32RC</i>	<i>90 days</i>
<i>132-33, 132-33STLOC, 132-33RC</i>	<i>90 days</i>
<i>132-51, 132-51STLOC, 132-51RC</i>	<i>As outlined within the Authorized FSS Schedule Pricelist –Terms and Conditions Applicable to IT Professional Services- Performance of Services</i>

**7. FOB POINT - DESTINATION**

**8. DELIVERY SCHEDULE:**

**a. Time of Delivery**-The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO), as set forth below:

<b><i>Special Item Numbers</i></b>	<b><i>Normal Delivery</i></b>	<b><i>Expedited Delivery</i></b>
<i>All SINs</i>	<i>30 days</i>	<i>As negotiated between Manan, LLC. dba Gyrus Systems and the Ordering Activity</i>

**b. Urgent Requirements:** When the Federal Supply Service Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, ordering activities are encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within 3 workdays after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**9. DISCOUNTS:** Prices shown are NET Prices; Basic Discounts have been deducted.

**a. Standard Discounts:** 2%- 57.2% off commercial list prices

**b. Prompt Payment:** None Offered

**c. Quantity Discounts:** None Offered

**d. Dollar Volume Discounts:** None Offered

**e. Government Educational Institutions Discounts-** The Government Educational Institutions are offered the same discounts as all other Government customers under this contract.

**f. Other (Specify):** Rebates - None Offered

**10. TRADE AGREEMENTS ACT OF 1979, as amended:**

*All items are U.S. made end products, designated country end products, Caribbean Basin country end products, Canadian end products, or Mexican end products as defined in the Trade Agreements Act of 1979, as amended.*

**11. STATEMENT CONCERNING AVAILABILITY OF EXPORT PACKING:**

*Manan, LLC. dba Gyrus Systems does not offer export packing under the contract.*

**12. SMALL REQUIREMENTS: \$50.00**

**13. MAXIMUM ORDER: (All dollar amounts are exclusive of any discount for prompt payment.)**

*a. The Maximum Order value for the following Special Item Numbers (SINs) is **\$500,000:***

*Special Item Numbers 132-32, 132-32STLOC, 132-32RC – Term Software Licenses*

*Special Item Number 132-33, 132-33STLOC, 132-33RC– Perpetual Software Licenses*

*Special Item Numbers 132-34, 132-34STLOC, 132-34RC- Maintenance of Software as a Service*

*Special Item Numbers 132-51, 132-51STLOC, 132-51RC- IT Professional Services*

*b. The Maximum Order value for the following Special Item Numbers (SINs) is **\$25,000:***

*Special Item Numbers 132-50, 132-50STLOC, 132-50RC –Training Courses for Software Licenses*

**14. ORDERING PROCEDURES FOR FEDERAL SUPPLY SERVICE SCHEDULE CONTRACTS:**

*Ordering activities shall use the ordering procedures of Federal Acquisition Regulation (FAR) 8.405 when placing an order or establishing a BPA for supplies or services. These procedures apply to all schedules.*

*a. FAR 8.405-1 Ordering procedures for supplies, and services not requiring a statement of work.*

*b. FAR 8.405-2 Ordering procedures for services requiring a statement of work.*

**15. FEDERAL INFORMATION TECHNOLOGY TELECOMMUNICATION STANDARDS**

**REQUIREMENTS:** *Ordering activities acquiring products from this Schedule must comply with the provisions of the Federal Standards Program, as appropriate (reference: NIST Federal Standards Index).*

*Inquiries to determine whether or not specific products listed herein comply with Federal Information Processing Standards (FIPS) or Federal Telecommunication Standards (FED-STDS), which are cited by ordering activities, shall be responded to promptly by the Contractor.*

**15.1 FEDERAL INFORMATION PROCESSING STANDARDS PUBLICATIONS (FIPS PUBS):**

*Information Technology products under this Schedule that do not conform to Federal Information Processing Standards (FIPS) should not be acquired unless a waiver has been granted in accordance with the applicable "FIPS Publication." Federal Information Processing Standards Publications (FIPS PUBS) are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Information concerning their availability and applicability should be obtained from the National*

Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. FIPS PUBS include voluntary standards when these are adopted for Federal use. Individual orders for FIPS PUBS should be referred to the NTIS Sales Office, and orders for subscription service should be referred to the NTIS Subscription Officer, both at the above address, or telephone number (703) 487-4650.

**15.2 FEDERAL TELECOMMUNICATION STANDARDS (FED-STDs):** Telecommunication products under this Schedule that do not conform to Federal Telecommunication Standards (FED-STDs) should not be acquired unless a waiver has been granted in accordance with the applicable "FED-STD." Federal Telecommunication Standards are issued by the U.S. Department of Commerce, National Institute of Standards and Technology (NIST), pursuant to National Security Act. Ordering information and information concerning the availability of FED-STDs should be obtained from the GSA, Federal Acquisition Service, Specification Section, 470 East L'Enfant Plaza, Suite 8100, SW, Washington, DC 20407, telephone number (202)619-8925. Please include a self-addressed mailing label when requesting information by mail. Information concerning their applicability can be obtained by writing or calling the U.S. Department of Commerce, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301)975-2833.

**16. CONTRACTOR TASKS / SPECIAL REQUIREMENTS (C-FSS-370) (NOV 2003) :**

(a) **Security Clearances:** The Contractor may be required to obtain/possess varying levels of security clearances in the performance of orders issued under this contract. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the Multiple Award Schedule.

(b) **Travel:** The Contractor may be required to travel in performance of orders issued under this contract. Allowable travel and per diem charges are governed by Pub .L. 99-234 and FAR Part 31, and are reimbursable by the ordering agency or can be priced as a fixed price item on orders placed under the Multiple Award Schedule. Travel in performance of a task order will only be reimbursable to the extent authorized by the ordering agency. The Industrial Funding Fee does NOT apply to travel and per diem charges.

(c) **Certifications, Licenses and Accreditations:** As a commercial practice, the Contractor may be required to obtain/possess any variety of certifications, licenses and accreditations for specific FSC/service code classifications offered. All costs associated with obtaining/ possessing such certifications, licenses and accreditations should be factored into the price offered under the Multiple Award Schedule program.

(d) **Insurance:** As a commercial practice, the Contractor may be required to obtain/possess insurance coverage for specific FSC/service code classifications offered. All costs associated with obtaining/possessing such insurance should be factored into the price offered under the Multiple Award Schedule program.

(e) **Personnel:** The Contractor may be required to provide key personnel, resumes or skill category descriptions in the performance of orders issued under this contract. Ordering activities may require agency approval of additions or replacements to key personnel.

(f) **Organizational Conflicts of Interest:** Where there may be an organizational conflict of interest as determined by the ordering agency, the Contractor's participation in such order may be restricted in accordance with FAR Part 9.5.

(g) **Documentation/Standards:** *The Contractor may be requested to provide products or services in accordance with rules, regulations, OMB orders, standards and documentation as specified by the agency's order.*

(h) **Data/Deliverable Requirements:** *Any required data/deliverables at the ordering level will be as specified or negotiated in the agency's order.*

(i) **Government-Furnished Property:** *As specified by the agency's order, the Government may provide property, equipment, materials or resources as necessary.*

(j) **Availability of Funds:** *Many Government agencies' operating funds are appropriated for a specific fiscal year. Funds may not be presently available for any orders placed under the contract or any option year. The Government's obligation on orders placed under this contract is contingent upon the availability of appropriated funds from which payment for ordering purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are available to the ordering Contracting Officer.*

(k) **Overtime:** *For professional services, the labor rates in the Schedule should not vary by virtue of the Contractor having worked overtime. For services applicable to the Service Contract Act (as identified in the Schedule), the labor rates in the Schedule will vary as governed by labor laws (usually assessed a time and a half of the labor rate).*

**17. CONTRACT ADMINISTRATION FOR ORDERING ACTIVITIES:** *Any ordering activity, with respect to any one or more delivery orders placed by it under this contract, may exercise the same rights of termination as might the GSA Contracting Officer under provisions of FAR 52.212-4, paragraphs (l) Termination for the ordering activity's convenience, and (m) Termination for Cause (See 52.212-4).*

**18. GSA ADVANTAGE!**

*GSA Advantage! is an on-line, interactive electronic information and ordering system that provides on-line access to vendors' schedule prices with ordering information. GSA Advantage! will allow the user to perform various searches across all contracts including, but not limited to:*

- (1) *Manufacturer;*
- (2) *Manufacturer's Part Number; and*
- (3) *Product categories.*

*Agencies can browse GSA Advantage! by accessing the Internet World Wide Web utilizing a browser (ex.: NetScape). The Internet address is <http://www.gsaadvantage.gov/>.*

**19. PURCHASE OF OPEN MARKET ITEMS:**

*NOTE: Open Market Items are also known as incidental items, noncontract items, non-Schedule items, and items not on a Federal Supply Service Schedule contract. ODCs (Other Direct Costs) are not part of this contract and should be treated as open market purchases. Ordering Activities procuring open market items must follow FAR 8.402(f).*



*For administrative convenience, an ordering activity contracting officer may add items not on the Federal Supply Multiple Award Schedule (MAS) -- referred to as open market items -- to a Federal Supply Service Schedule blanket purchase agreement (BPA) or an individual task or delivery order, only if-*

- (1) All applicable acquisition regulations pertaining to the purchase of the items not on the Federal Supply Service Schedule have been followed (e.g., publicizing (Part 5), competition requirements (Part 6), acquisition of commercial items (Part 12), contracting methods (Parts 13, 14, and 15), and small business programs (Part 19));*
- (2) The ordering activity contracting officer has determined the price for the items not on the Federal Supply Service Schedule is fair and reasonable;*
- (3) The items are clearly labeled on the order as items not on the Federal Supply Service Schedule; and*
- (4) All clauses applicable to items not on the Federal Supply Service Schedule are included in the order.*

**20. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS:**

*a. For the purpose of this contract, commitments, warranties and representations include, in addition to those agreed to for the entire schedule contract:*

- (1) Time of delivery/installation quotations for individual orders;*
- (2) Technical representations and/or warranties of products concerning performance, total system performance and/or configuration, physical, design and/or functional characteristics and capabilities of a product/equipment/ service/software package submitted in response to requirements which result in orders under this schedule contract.*
- (3) Any representations and/or warranties concerning the products made in any literature, description, drawings and/or specifications furnished by the Contractor.*

*b. The above is not intended to encompass items not currently covered by the GSA Schedule contract.*

**21. OVERSEAS ACTIVITIES:**

*The terms and conditions of this contract shall apply to all orders for installation, maintenance and repair of equipment in areas listed in the pricelist outside the 48 contiguous states and the District of Columbia, except as indicated below: **None Offered***

*Upon request of the Contractor, the ordering activity may provide the Contractor with logistics support, as available, in accordance with all applicable ordering activity regulations. Such ordering activity support will be provided on a reimbursable basis, and will only be provided to the Contractor's technical personnel whose services are exclusively required for the fulfillment of the terms and conditions of this contract.*

**22. BLANKET PURCHASE AGREEMENTS (BPAs):**

*The use of BPAs under any schedule contract to fill repetitive needs for supplies or services is allowable. BPAs may be established with one or more schedule contractors. The number of BPAs to be established is within the discretion of the ordering activity establishing the BPA and should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). Ordering activities shall follow FAR 8.405-3 when creating and implementing BPA(s).*

**23. CONTRACTOR TEAM ARRANGEMENTS**

*Contractors participating in contractor team arrangements must abide by all terms and conditions of their respective contracts. This includes compliance with Clauses 552.238-74, Industrial Funding Fee and Sales Reporting, i.e., each contractor (team member) must report sales and remit the IFF for all products and services provided under its individual contract.*

**24. INSTALLATION, DEINSTALLATION, REINSTALLATION**

*The Davis-Bacon Act (40 U.S.C. 276a-276a-7) provides that contracts in excess of \$2,000 to which the United States or the District of Columbia is a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works with the United States, shall contain a clause that no laborer or mechanic employed directly upon the site of the work shall received less than the prevailing wage rates as determined by the Secretary of Labor. The requirements of the Davis-Bacon Act do not apply if the construction work is incidental to the furnishing of supplies, equipment, or services. For example, the requirements do not apply to simple installation or alteration of a public building or public work that is incidental to furnishing supplies or equipment under a supply contract. However, if the construction, alteration or repair is segregable and exceeds \$2,000, then the requirements of the Davis-Bacon Act applies.*

*The ordering activity issuing the task order against this contract will be responsible for proper administration and enforcement of the Federal labor standards covered by the Davis-Bacon Act. The proper Davis-Bacon wage determination will be issued by the ordering activity at the time a request for quotations is made for applicable construction classified installation, deinstallation, and reinstallation services under SIN 132-8 and 132-9.*

**25. SECTION 508 COMPLIANCE.**

*If applicable, Section 508 compliance information on the supplies and services in this contract are available in Electronic and Information Technology (EIT) at the following: [www.gyrus.com](http://www.gyrus.com)*

*The EIT standard can be found at: [www.Section508.gov/](http://www.Section508.gov/).*

**26. PRIME CONTRACTOR ORDERING FROM FEDERAL SUPPLY SERVICE SCHEDULES:**

*Prime Contractors (on cost reimbursement contracts) placing orders under Federal Supply Service Schedules, on behalf of an ordering activity, shall follow the terms of the applicable schedule and authorization and include with each order:*

- (a) A copy of the authorization from the ordering activity with whom the contractor has the prime contract (unless a copy was previously furnished to the Federal Supply Service Schedule contractor); and*
- (b) The following statement:*

*This order is placed under written authorization from \_\_\_\_\_ dated \_\_\_\_\_. In the event of any inconsistency between the terms and conditions of this order and those of your Federal Acquisition Service Schedule contract, the latter will govern.*

**27. INSURANCE—WORK ON A GOVERNMENT INSTALLATION (JAN 1997)(FAR 52.228-5):**

- (a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.*
- (b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective—*
  - (1) For such period as the laws of the State in which this contract is to be performed prescribe; or*
  - (2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.*
- (c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.*

**28. SOFTWARE INTEROPERABILITY:**

*Offerors are encouraged to identify within their software items any component interfaces that support open standard interoperability. An item's interface may be identified as interoperable on the basis of participation in a Government agency-sponsored program or in an independent organization program. Interfaces may be identified by reference to an interface registered in the component registry located at <http://www.core.gov>.*

**29. ADVANCE PAYMENTS:**

*A payment under this contract to provide a service or deliver an article for the United States Government may not be more than the value of the service already provided or the article already delivered. Advance or pre-payment is not authorized or allowed under this contract. (31 U.S.C. 3324)*

**TERMS AND CONDITIONS APPLICABLE TO TERM SOFTWARE LICENSES (SPECIAL ITEM NUMBERS 132-32, 132-32STLOC, 132-32RC), PERPETUAL SOFTWARE LICENSES (SPECIAL ITEM NUMBERS 132-33, 132-33STLOC, 132-33RC), AND MAINTENANCE OF SOFTWARE AS A SERVICE (SPECIAL ITEM NUMBERS 132-34, 132-34STLOC, 132-34RC) OF GENERAL PURPOSE COMMERCIAL INFORMATION TECHNOLOGY SOFTWARE**

**1. INSPECTION/ACCEPTANCE**

*The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The ordering activity reserves the right to inspect or test any software that has been tendered for acceptance. The ordering activity may require repair or replacement of nonconforming software at no increase in contract price. The ordering activity must exercise its postacceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the software, unless the change is due to the defect in the software.*

**2. MANAN, LLC. DBA GYRUS SYSTEMS SOFTWARE LICENSE AGREEMENTS**

**a) For the Training Wizard MX/SST Renewal ( Annual Base License up to 500 active students and Per User License –Student)** – The ordering activities utilizing this schedule contract does not have to sign any type of EULA agreement in order to purchase this software licenses under this contract for SINs 132-32, 132-32STLOC and 132-32RC.

**For the GyrusAIM Software Licenses Agreement – Refer to Attachment I.**

**3. TECHNICAL SERVICES**

*The Contractor, without additional charge to the ordering activity, shall provide a hot line technical support number 1-888-GO-GYRUS (464-9787) for the purpose of providing user assistance and guidance in the implementation of the software. The technical support number is available from 8AM to 5PM Eastern Standard Time and support questions after live hours can be emailed to [support@gyrus.com](mailto:support@gyrus.com) to be replied to within 48 hours.*

**4. MAINTENANCE OF SOFTWARE**

**Maintenance of Software as a Product** (SINs 132-32, 132-32STLOC, 132-32RC, 132-33, 132-33STLOC, and 132-33RC)

*Software maintenance as a product includes the publishing of bug/defect fixes via patches and updates/upgrades in function and technology to maintain the operability and usability of the software product. It may also include other no charge support that is included in the purchase price of the product in the commercial marketplace. No charge support includes items such as user blogs, discussion forums, on-line help libraries and FAQs (Frequently Asked Questions), hosted chat rooms, and limited telephone, email and/or web-based general technical support for user's self diagnostics. Software maintenance as a product does NOT*

include the creation, design, implementation, integration, etc. of a software package. These examples are considered software maintenance as a service.

***Software Maintenance as a product is billed at the time of purchase.***

**Maintenance of Software as a Services (SINs 132-34, 132-34STLOC, and 132-34)**

Software maintenance as a service creates, designs, implements, and/or integrates customized changes to software that solve one or more problems and is not included with the price of the software. Software maintenance as a service includes person-to-person communications regardless of the medium used to communicate; telephone support; on-line technical support; and /or technical expertise which are charged commercially. Software maintenance as a service is billed arrears in accordance with 31 U.S.C. 3324.

Invoices for maintenance service shall be submitted by Manan, LLC. dba Gyrus Systems on a quarterly or monthly basis, after the completion of such period. Maintenance charges must be paid in arrears (31 U.S.C. 3324). **PROMPT PAYMENT DISCOUNT, IF APPLICABLE SHALL BE SHOW ON THE INVOICE.**

**5. PERIODS OF TERM LICENSES (SINs 132-32, 132-32STLOC, 132-32RC) and MAINTENANCE OF SOFTWARE (SINs 132-34, 132-34STLOC, 132-34RC)**

- a. The Contractor shall honor orders for periods for the duration of the contract period or a lesser period of time.
- b. Term licenses and/or maintenance may be discontinued by the ordering activity on thirty (30) calendar days written notice to the Contractor.
- c. Annual Funding. When annually appropriated funds are cited on an order for term licenses and/or maintenance, the period of the term licenses and/or maintenance shall automatically expire on September 30 of the contract period, or at the end of the contract period, whichever occurs first. Renewal of the term licenses and/or maintenance orders citing the new appropriation shall be required, if the term licenses and/or maintenance is to be continued during any remainder of the contract period.
- d. Cross-Year Funding Within Contract Period. Where an ordering activity's specific appropriation authority provides for funds in excess of a 12 month (fiscal year) period, the ordering activity may place an order under this schedule contract for a period up to the expiration of the contract period, notwithstanding the intervening fiscal years.
- e. Ordering activities should notify the Contractor in writing thirty (30) calendar days prior to the expiration of an order, if the term licenses and/or maintenance is to be terminated at that time. Orders for the continuation of term licenses and/or maintenance will be required if the term licenses and/or maintenance is to be continued during the subsequent period.

**6. TERM LICENSE CESSATION**

- a. After a software product has been on a continuous term license for a period of 12 months, a fully paid-up, non-exclusive, perpetual license for the software product shall automatically accrue to the ordering activity. The period of continuous term license for automatic accrual of a fully paid-up perpetual license does not have to be achieved during a particular fiscal year; it is a written Contractor commitment which continues to be available for software that is initially ordered under this contract, until a fully paid-up perpetual license accrues to the ordering activity. However, should the term license of the software be discontinued before the

*specified period of the continuous term license has been satisfied, the perpetual license accrual shall be forfeited.*

*b. The Contractor agrees to provide updates and maintenance service for the software after a perpetual license has accrued, at the prices and terms of Special Item Number 132-34, if the licensee elects to order such services. Title to the software shall remain with the Contractor.*

**7. UTILIZATION LIMITATIONS - (132-32, 132-32STLOC, 132-32RC, 132-33, 132-33STLOC, 132-33RC, 132-34, 132-34STLOC, and 132-34RC)**

*a. Software acquisition is limited to commercial computer software defined in FAR Part 2.101.*

*b. When acquired by the ordering activity, commercial computer software and related documentation so legend shall be subject to the following:*

*(1) Title to and ownership of the software and documentation shall remain with the Contractor, unless otherwise specified.*

*(2) Software licenses are by site and by ordering activity. An ordering activity is defined as a cabinet level or independent ordering activity. The software may be used by any subdivision of the ordering activity (service, bureau, division, command, etc.) that has access to the site the software is placed at, even if the subdivision did not participate in the acquisition of the software. Further, the software may be used on a sharing basis where multiple agencies have joint projects that can be satisfied by the use of the software placed at one ordering activity's site. This would allow other agencies access to one ordering activity's database. For ordering activity public domain databases, user agencies and third parties may use the computer program to enter, retrieve, analyze and present data. The user ordering activity will take appropriate action by instruction, agreement, or otherwise, to protect the Contractor's proprietary property with any third parties that are permitted access to the computer programs and documentation in connection with the user ordering activity's permitted use of the computer programs and documentation. For purposes of this section, all such permitted third parties shall be deemed agents of the user ordering activity.*

*(3) Except as is provided in paragraph 8.b(2) above, the ordering activity shall not provide or otherwise make available the software or documentation, or any portion thereof, in any form, to any third party without the prior written approval of the Contractor. Third parties do not include prime Contractors, subcontractors and agents of the ordering activity who have the ordering activity's permission to use the licensed software and documentation at the facility, and who have agreed to use the licensed software and documentation only in accordance with these restrictions. This provision does not limit the right of the ordering activity to use software, documentation, or information therein, which the ordering activity may already have or obtains without restrictions.*

*(4) The ordering activity shall have the right to use the computer software and documentation with the computer for which it is acquired at any other facility to which that computer may be transferred, or in cases of Disaster Recovery, the ordering activity has the right to transfer the software to another site if the ordering activity site for which it is acquired is deemed to be unsafe for ordering activity personnel; to use the computer*

software and documentation with a backup computer when the primary computer is inoperative; to copy computer programs for safekeeping (archives) or backup purposes; to transfer a copy of the software to another site for purposes of benchmarking new hardware and/or software; and to modify the software and documentation or combine it with other software, provided that the unmodified portions shall remain subject to these restrictions.

(5) "Commercial Computer Software" may be marked with the Contractor's standard commercial restricted rights legend, but the schedule contract and schedule pricelist, including this clause, "Utilization Limitations" are the only governing terms and conditions, and shall take precedence and supersede any different or additional terms and conditions included in the standard commercial legend.

## **8. SOFTWARE CONVERSIONS - (SIN 132-32, 132-32STLOC, 132-32RC, 132-33, 132-33STLOC, and 132-33RC)**

Full monetary credit will be allowed to the ordering activity when conversion from one version of the software to another is made as the result of a change in operating system, or from one computer system to another. Under a perpetual software license (132-33, 132-33STLOC, 132-33RC), the price of the new software shall be reduced by the amount that was paid to purchase the earlier version. Under a term software license (132-32, 132-32STLOC, 132-32RC), conversion credits which accrued while the earlier version was under a term license shall carry forward and remain available as conversion credits which may be applied towards the perpetual license price of the new version.

## **9. DESCRIPTIONS OF SOFTWARE AND EQUIPMENT COMPATIBILITY**

Features	GyrusAim	Benefits
<b>Deployment</b>		
Hosted	✓	Gyrus Systems handles maintenance
Installed	✓	System is behind your own firewall
SaaS	✓	
Platforms	✓	Windows Servers 2008 R2
Databases	✓	MS SQL 2012
<b>Compliance</b>		Full-spectrum content support
AICC-Compliant	✓	
SCORM Compliant	✓	



Features	GyrusAim	Benefits
ExperienceAPI-Compliant (TinCan)	✓	Offers exciting possibilities for interoperability
508-Compliant	✓	Supports assistive technologies
<b>Licensing/Pricing</b>		
Active license pricing	✓	Easy-to-understand; add system costs <u>only</u> when you add users
Subscription	✓	
Annualized	✓	
Perpetual	✓	
Maintenance	FREE	
Upgrades	FREE	Four releases each year; customer-driven
Customer Support	FREE	US-based online, phone and e-mail customer service staff
<b>Integration</b>		
Active Directory Integration	✓	
eCommerce	✓	
Email	✓	
Mobile accessibility	✓	
Third Party eLearning Courses	✓	Allows you to pursue 'Best of Breed' approach to content providers and authoring tools
Outlook calendar	✓	
Legacy System	✓	
Data Warehouse	✓	
API's	✓	

Features	GyrusAim	Benefits
<b>Construction</b>		
Scalable	✓	Stress-tested for 1million users and 20,000 users concurrently.
Organic construction	✓	Superior analytics and system durability
Role-based permissions	Unlimited	Flexible permissions management
Flexible Security & Role Definitions	Unlimited	Flexible combinations
Role cloning	✓	Fast configuration of additional roles
Skills-centric	✓	Supports competency management
Organizations	Unlimited	Build your own VLO (Virtual Learning Organization) without restrictions
Organization tree levels	Unlimited	
Jobs	Unlimited	
Supervisors per organization node	Unlimited	
Web-enabled	✓	Web-enabled for easy access using common browsers; IE; FireFox; Safari, Chrome
Web services construction	✓	Supports ERP interoperability
Utilizes Learning Objects	✓	Adds flexibility to course construction
<b>Security</b>		
Authentication	✓	
User Access Controls	✓	
Supports SSL (Secured Sockets Layers)	✓	
Encrypt passwords	✓	
Deactivate personnel while maintaining history	✓	Never lose critical data; supports your regulatory reporting responsibilities
<b>User Interface/Navigation</b>		

Features	GyrusAim	Benefits
Global search system navigation	✓	Easy identification of application data
Hover/click navigation	✓	Super-fast navigation
Easy-to-understand icons	✓	User-friendly navigation in <u>any</u> language
Dashboard messaging	✓	Fast system-wide communication
User-configurable UI	✓	Easy integration into company branding
User-configurable branding	✓	Coordinate with your company themes
Color-scheme personalization	✓	Match your company colors or user preference
Multi-Browser	✓	(IE, FireFox, Chrome, and Safari)
Multilingual	✓	(25+ Languages)
Intuitive grouping of features	✓	Faster implementation and adoption by administrators and users
<b>Configurability</b>		
User-configurable dashboards	✓	Personalized training environments for users
Personalized Course Catalogs	✓	Eliminate ‘training overload’ and increases training effectiveness
Custom edit fields per entity	50 per entity or 450 total	
Entities that use custom edit fields	9	
E-mail notifications	28	
		GyrusAim features make administration fast and simple
<b>Administration</b>		
Audit Trail	✓	
Workflow management	✓	
Custom Branding	✓	
Custom Fields	✓	

Features	GyrusAim	Benefits
Flexible roles and permissions	✓	
<b>Content Management</b>		Fast, flexible upload/download and use of your content!!
Data Import/Export	✓	
User mass SCORM Import	✓	
Legacy Data Import	✓	
Utilize non-SCORM content	✓	
Auto Create Skill-LO-Course	✓	
<b>Course Development</b>		GyrusAim course construction and management features promote fast, flexible and efficient course-building efforts
Utilizes Learning Objects		Flexible course construction/content management
Courses	Unlimited	
File sizes	Unlimited	
Course notes, summary and training goal	✓	
Direct courses to learner's IDP	✓	Targeted Training
Display courses for a skill	✓	
Display courses for a skill level	✓	
Restrict Course view	✓	Reduce 'training overload'
Supervisor view staff course catalog	✓	
Subject Matter Experts linked to courses	✓	
Course equivalencies	✓	
Course templates	✓	
Course cloning	✓	
Course versioning	✓	

Features	GyrusAim	Benefits
Course sequencing	✓	
Course vendor tracking	✓	
Require Prerequisites	✓	
Set CE, Training hours, completion hours	✓	
Set recurrence patterns	✓	
		GyrusAim class management features make scheduling an instance of a course easy, flexible and effective
<b>Class Management</b>		
Resource Management	✓	
Class Calendar	✓	
E-mail settings	✓	
Custom Edit fields	✓	
Cost tracking	✓	
Conflict checking	✓	
Rescheduling	✓	
Canceling	✓	
Retroactive scheduling	✓	
Block scheduling (multiple classes over a period of time)	✓	
Schedule a learning object outside of a course	✓	
Schedule resources outside of a class	✓	
Pattern Management	✓	
Enrollment functions	✓	
Waitlist priority; skill expiry or enroll date	✓	
Auto-enroll from waitlist	✓	
Auto-enroll/require approval	✓	

Features	GyrusAim	Benefits
Allow/prohibit Drop-ins	✓	
Batch enroll	✓	
Set min/max enrollment	✓	
Enrollment notifications	✓	
Student	✓	
Supervisor	✓	
Display classes available to meet IDP	✓	
Display classes available to meet Gap Analysis	✓	
Class completion options—Attendance, completion, and test score	✓	
		GyrusAim supports all forms of commonly-used corporate training methods
<b>Training Management</b>		
eLearning	✓	
Instructor Led	✓	
Blended Learning	✓	
On-the-job	✓	
Self-reported (external)	✓	
WebEx	✓	
<b>Resource Management</b>		
Instructors	✓	
Instructor cultures	Unlimited	
Classroom locations	✓	
Virtual	✓	.apk, .csv, .dmg, .doc, .docx., .flash, .gif, .jpeg, .jpg, .mp3, .odm, .pdf, .png, .pp, .ppt, .pptx, .rar, .rtf, .tiff, .wav, .xls, .xlsx, .zip.
Consumables (pens, notepads, etc.)	✓	

Features	GyrusAim	Benefits
Non-consumables (DVD players, TVs, etc.)	✓	
Inventory Management	✓	
Reorder Points	✓	
Classroom reservations	✓	
Multiple/flexible room details	✓	
Room seating capacities	Unlimited	
Resource conflict checking	All resources	
Expiration of physical resources	✓	
<b>Cost Management</b>		
Cost “buckets”	Unlimited	
Fixed Costs	✓	
Variable Costs	✓	
Shared Costs	✓	
Costs associations	All 9 major entities	
Free-entry fields	✓	
<b>Certification Management</b>		With GyrusAim certification management tools and notifications, certifications should never expire, cause you to incur fines or lose valuable employee time
Manage certifications	✓	
Assign certification requirements	✓	
Organizations	✓	
People	✓	
Jobs	✓	
Configurable certification expiry	✓	Provide plenty of recertification lead time

Features	GyrusAim	Benefits
Configurable re-certification window	✓	Assures currency of training
Expiration notifications	✓	
User	✓	
Manager	✓	
		Supports ISO 9001 competency management efforts
<b>Skills Management</b>		
Associate skills to:		
Job	✓	
Person	✓	Monitor contract worker skills!
Department	✓	
Certification	✓	
Learning Object	✓	
Course	✓	
IDP	✓	
Gap Analyses	✓	
Skill expiration	✓	Easily keep skills up-to-date
Expiration notification	✓	
User	✓	
Supervisor	✓	
Configurable skill ratings	✓	
Hierarchical Job Titles	✓	
Assign 3 <sup>rd</sup> -party content assessments to skill ratings	✓	
Assessment determines the skill levels(skill level determined by the assessment)	✓	Automated skill improvement
Skill level determined by the assessment (pass	✓	Automated skill level determination



Features	GyrusAim	Benefits
the assessment to achieve a skill level)		
<b>Testing/Feedback</b>		
Assessments	✓	
Integrated assessments	✓	
Question pools	✓	
Question randomization	✓	Test skills, not test-taking ability
Configurable retake delay	✓	Test knowledge, not memory
Progress meter to facilitate completion	✓	Keeps learners on track
Assessment determines the skill level	✓	Manage skill-level acquisition
Exhibited assessments	✓	Supports OJT efforts
Pre/Post Test Score Tracking	✓	Better manage learner capabilities.
		Get valuable feedback on your training and development efforts
<b>Evaluations</b>		
User-defined topics	✓	
Number of topics	3	
Range of responses	1-5, N/A	
Evaluation assigned as default	✓	
Require completion to receive credit	✓	
Evaluations at the learning object level	✓	
Evaluations completed via the web	✓	
Multiple evaluations per course	✓	
		GyrusAim social learning and communication features enhance and reinforce learning and training efforts
<b>E-mail/Social Learning</b>		
Discussion Forum	✓	

Features	GyrusAim	Benefits
Discussion Management	✓	
Live Chat	✓	
Wikis	✓	
File Exchange	✓	
E-mail functions	✓	
Outlook email	✓	
E-mail templates	✓	39 configurable templates
E-mail audit logs	✓	
E-mail preview	✓	
Outlook calendar	✓	Automatically send Outlook enrollment appointments
Productivity		
Bookmarking	✓	Supports 'exact time' bookmarks
Training Workflow	✓	
Work offline	✓	
<b>People/Talent Management</b>		
Individual Development Plans(IDP)	✓	Easy-to-read plans to improve current job performance
Job	✓	
Organization	✓	
Certification	✓	
Learner interests	✓	
Manager- assigned	✓	
Skill requirements	✓	

Features	GyrusAim	Benefits
Display courses to meet requirements	✓	
Gap Analyses	✓	Easy-to-understand requirements for aspirational jobs and certifications
Job	✓	
Organization	✓	
Certification	✓	
Display courses to meet requirements	✓	
Skills Transcript (student/supervisor view)	✓	
Training Transcript (student/supervisor view)	✓	
<b>Reporting</b>		
Standard reports	✓	50 report titles/135 total reports
User-configurable reports	✓	
SSR Report Generator	✓	Develop your own custom reports
<b>Customer Support</b>		Proprietary Gyrus Systems Employees
Customer Support Ticket Portal	FREE	
Help Desk	FREE	
KnowledgeBase	FREE	
E-mail/phone support	FREE	

# 11. **RIGHT-TO-COPY PRICING**

*RIGHT TO COPY IS NOT OFFERED UNDER THE CONTRACT*

**12. SOFTWARE PRICING:**

<b><i>SIN 132-32 Term Software Licensing</i></b>	<b><i>GSA Price</i></b>
<b><i>Training Wizard MX/SST Renewal</i></b>	
<b><i>Annual Base License up to 500 active students.</i></b>	<b><i>\$5,037.78</i></b>
<b><i>Per User License – Student</i></b>	<b><i>\$7.20</i></b>
<b><i>SIN 132-33 Perpetual Software License</i></b>	
<b><i>GyrusAim Licenses</i></b>	
<b><i>per student</i></b> <b><i>500-10,000</i></b>	<b><i>\$29.66</i></b>
<b><i>per student</i></b> <b><i>10,001-20,000</i></b>	<b><i>\$26.54</i></b>
<b><i>per student</i></b> <b><i>20,001+</i></b>	<b><i>\$24.59</i></b>
<b><i>GyrusAim Hosting</i></b>	
<b><i>per student</i></b> <b><i>500-10,000</i></b>	<b><i>\$9.82</i></b>
<b><i>per student</i></b> <b><i>10,001- 20,000</i></b>	<b><i>\$6.88</i></b>
<b><i>per student</i></b> <b><i>20,001 +</i></b>	<b><i>\$4.90</i></b>
<b><i>SIN 132-34 Maintenance of Software</i></b>	
<b><i>GyrusAim annual Maintenance and Support</i></b>	<b><i>23% of license fees</i></b>
<b><i>GyrusAim and Training Wizard</i></b>	
<b><i>(includes: implementation planning, data migration, installations, and customizations.)</i></b>	
<b><i>Daily rate</i></b>	<b><i>\$1,420.65</i></b>
<b><i>Hourly rate</i></b>	<b><i>\$175.68</i></b>

**TERMS AND CONDITIONS APPLICABLE TO PURCHASE OF  
TRAINING COURSES FOR GENERAL PURPOSE COMMERCIAL  
INFORMATION TECHNOLOGY EQUIPMENT AND SOFTWARE  
(SPECIAL ITEM NUMBERS 132-50, 132-50STLOC, 132-50RC)**

**1. SCOPE**

- a. *The Contractor shall provide training courses normally available to commercial customers, which will permit ordering activity users to make full, efficient use of general purpose commercial IT products. Training is restricted to training courses for those products within the scope of this solicitation.*
- b. *The Contractor shall provide training at the Contractor's facility and/or at the ordering activity's location, as agreed to by the Contractor and the ordering activity.*

**2. ORDER**

*Written orders, EDI orders (GSA Advantage! and FACNET), credit card orders, and orders placed under blanket purchase agreements (BPAs) shall be the basis for the purchase of training courses in accordance with the terms of this contract. Orders shall include the student's name, course title, course date and time, and contracted dollar amount of the course.*

**3. TIME OF DELIVERY**

*The Contractor shall conduct training on the date (time, day, month, and year) agreed to by the Contractor and the ordering activity.*

**4. CANCELLATION AND RESCHEDULING**

- a. *The ordering activity will notify the Contractor at least seventy-two (72) hours before the scheduled training date, if a student will be unable to attend. The Contractor will then permit the ordering activity to either cancel the order or reschedule the training at no additional charge. In the event the training class is rescheduled, the ordering activity will modify its original training order to specify the time and date of the rescheduled training class.*
- b. *In the event the ordering activity fails to cancel or reschedule a training course within the time frame specified in paragraph a, above, the ordering activity will be liable for the contracted dollar amount of the training course. The Contractor agrees to permit the ordering activity to reschedule a student who fails to attend a training class within ninety (90) days from the original course date, at no additional charge.*
- c. *The ordering activity reserves the right to substitute one student for another up to the first day of class.*
- d. *In the event the Contractor is unable to conduct training on the date agreed to by the Contractor and the ordering activity, the Contractor must notify the ordering activity at least seventy-two (72) hours before the scheduled training date.*

**5. FOLLOW-UP SUPPORT**

*The Contractor agrees to provide each student with unlimited telephone support or online support for a period of one (1) year from the completion of the training course. During this period, the student may contact the Contractor's instructors for refresher assistance and answers to related course curriculum questions.*

**6. PRICE FOR TRAINING**

*The price that the ordering activity will be charged will be the ordering activity training price in effect at the time of order placement, or the ordering activity price in effect at the time the training course is conducted, whichever is less.*

**7. INVOICES AND PAYMENT**

*Invoices for training shall be submitted by the Contractor after ordering activity completion of the training course. Charges for training must be paid in arrears (31 U.S.C. 3324). PROMPT PAYMENT DISCOUNT, IF APPLICABLE, SHALL BE SHOWN ON THE INVOICE.*

**8. FORMAT AND CONTENT OF TRAINING**

a. *The Contractor shall provide written materials (i.e., manuals, handbooks, texts, etc.) normally provided with course offerings. Such documentation will become the property of the student upon completion of the training class.*

b. ***\*\*If applicable\*\*** For hands-on training courses, there must be a one-to-one assignment of IT equipment to students.*

c. *The Contractor shall provide each student with a Certificate of Training at the completion of each training course.*

d. *The Contractor shall provide the following information for each training course offered:*

- (1) The course title and a brief description of the course content, to include the course format (e.g., lecture, discussion, hands-on training);*
- (2) The length of the course;*
- (3) Mandatory and desirable prerequisites for student enrollment;*
- (4) The minimum and maximum number of students per class;*
- (5) The locations where the course is offered;*
- (6) Class schedules; and*
- (7) Price (per student, per class (if applicable)).*

e. *For those courses conducted at the ordering activity's location, instructor travel charges (if applicable), including mileage and daily living expenses (e.g., per diem charges) are governed by Pub. L. 99-234 and FAR Part 31.205-46, and are reimbursable by the ordering activity on orders placed under the Multiple Award Schedule, as applicable, in effect on the date(s) the travel is performed. Contractors cannot use GSA city pair contracts. The Industrial Funding Fee does NOT apply to travel and per diem charges.*

f. For Online Training Courses, a copy of all training material must be available for electronic download by the students.

**9. “NO CHARGE” TRAINING**

The Contractor shall describe any training provided with equipment and/or software provided under this contract, free of charge, in the space provided below.

**None Offered**

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**10. TRAINING COURSES PRICING:**

<b><i>SIN 132-50, 132-50STLOC, 132-50RC – TRAINING COURSES</i></b>	
<b><i>Training Wizard Training Class – per day</i></b>	<b><i>\$1,974.81</i></b>
<b><i>GyrusAim Training Class – per day</i></b>	<b><i>\$1,974.81</i></b>

**TERMS AND CONDITIONS APPLICABLE TO INFORMATION TECHNOLOGY (IT)  
PROFESSIONAL SERVICES (SPECIAL ITEM NUMBERS 132-51, 132-51STLOC, 132-51RC)**

**\*\*\*\*NOTE:** *All non-professional labor categories must be incidental to, and used solely to support professional services, and cannot be purchased separately.*

**1. SCOPE**

- a. *The prices, terms and conditions stated under Special Item Numbers 132-51, 132-51STLOC, 132-51RC (Information Technology Professional Services) apply exclusively to IT Professional Services within the scope of this Information Technology Schedule.*
- b. *The Contractor shall provide services at the Contractor's facility and/or at the ordering activity location, as agreed to by the Contractor and the ordering activity.*

**2. PERFORMANCE INCENTIVES I-FSS-60 Performance Incentives (April 2000)**

- a. *Performance incentives may be agreed upon between the Contractor and the ordering activity on individual fixed price orders or Blanket Purchase Agreements under this contract.*
- b. *The ordering activity must establish a maximum performance incentive price for these services and/or total solutions on individual orders or Blanket Purchase Agreements.*
- c. *Incentives should be designed to relate results achieved by the contractor to specified targets. To the maximum extent practicable, ordering activities shall consider establishing incentives where performance is critical to the ordering activity's mission and incentives are likely to motivate the contractor. Incentives shall be based on objectively measurable tasks.*

**3. ORDER**

- a. *Agencies may use written orders, EDI orders, blanket purchase agreements, individual purchase orders, or task orders for ordering services under this contract. Blanket Purchase Agreements shall not extend beyond the end of the contract period; all services and delivery shall be made and the contract terms and conditions shall continue in effect until the completion of the order. Orders for tasks which extend beyond the fiscal year for which funds are available shall include FAR 52.232-19 (Deviation – May 2003) Availability of Funds for the Next Fiscal Year. The purchase order shall specify the availability of funds and the period for which funds are available.*
- b. *All task orders are subject to the terms and conditions of the contract. In the event of conflict between a task order and the contract, the contract will take precedence.*

**4. PERFORMANCE OF SERVICES**

- a. *The Contractor shall commence performance of services on the date agreed to by the Contractor and the ordering activity.*
- b. *The Contractor agrees to render services only during normal working hours, unless otherwise agreed to by the Contractor and the ordering activity.*



c. *The ordering activity should include the criteria for satisfactory completion for each task in the Statement of Work or Delivery Order. Services shall be completed in a good and workmanlike manner.*

d. *Any Contractor travel required in the performance of IT Professional Services must comply with the Federal Travel Regulation or Joint Travel Regulations, as applicable, in effect on the date(s) the travel is performed. Established Federal Government per diem rates will apply to all Contractor travel. Contractors cannot use GSA city pair contracts.*

**5. STOP-WORK ORDER (FAR 52.242-15) (AUG 1989)**

(a) *The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either-*

(1) *Cancel the stop-work order; or*

(2) *Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.*

(b) *If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if-*

(1) *The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and*

(2) *The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.*

(c) *If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.*

(d) *If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.*

**6. INSPECTION OF SERVICES**

*In accordance with FAR 52.212-4 CONTRACT TERMS AND CONDITIONS--COMMERCIAL ITEMS (MAR 2009) (DEVIATION I - FEB 2007) for Firm-Fixed Price orders and FAR 52.212-4 CONTRACT TERMS AND*

*CONDITIONS - COMMERCIAL ITEMS (MAR 2009) (ALTERNATE I -OCT 2008) (DEVIATION I – FEB 2007) applies to Time-and-Materials and Labor-Hour Contracts orders placed under this contract.*

**7. RESPONSIBILITIES OF THE CONTRACTOR**

*The Contractor shall comply with all laws, ordinances, and regulations (Federal, State, City, or otherwise) covering work of this character. If the end product of a task order is software, then FAR 52.227-14 (Dec 2007) Rights in Data – General, may apply.*

**8. RESPONSIBILITIES OF THE ORDERING ACTIVITY**

*Subject to security regulations, the ordering activity shall permit Contractor access to all facilities necessary to perform the requisite IT Professional Services.*

**9. INDEPENDENT CONTRACTOR**

*All IT Professional Services performed by the Contractor under the terms of this contract shall be as an independent Contractor, and not as an agent or employee of the ordering activity.*

**10. ORGANIZATIONAL CONFLICTS OF INTEREST**

**a. Definitions.**

*“Contractor” means the person, firm, unincorporated association, joint venture, partnership, or corporation that is a party to this contract.*

*“Contractor and its affiliates” and “Contractor or its affiliates” refers to the Contractor, its chief executives, directors, officers, subsidiaries, affiliates, subcontractors at any tier, and consultants and any joint venture involving the Contractor, any entity into or with which the Contractor subsequently merges or affiliates, or any other successor or assignee of the Contractor.*

*An “Organizational conflict of interest” exists when the nature of the work to be performed under a proposed ordering activity contract, without some restriction on ordering activities by the Contractor and its affiliates, may either (i) result in an unfair competitive advantage to the Contractor or its affiliates or (ii) impair the Contractor’s or its affiliates’ objectivity in performing contract work.*

**b.** *To avoid an organizational or financial conflict of interest and to avoid prejudicing the best interests of the ordering activity, ordering activities may place restrictions on the Contractors, its affiliates, chief executives, directors, subsidiaries and subcontractors at any tier when placing orders against schedule contracts. Such restrictions shall be consistent with FAR 9.505 and shall be designed to avoid, neutralize, or mitigate organizational conflicts of interest that might otherwise exist in situations related to individual orders placed against the schedule contract. Examples of situations, which may require restrictions, are provided at FAR 9.508.*

## **11. INVOICES**

*The Contractor upon completion of the work ordered, shall submit invoices for IT Professional services. Progress payments may be authorized by the ordering activity on individual orders if appropriate. Progress payments shall be based upon completion of defined milestones or interim products. Invoices shall be submitted monthly for recurring services performed during the preceding month.*

## **12. PAYMENTS**

*For firm-fixed price orders the ordering activity shall pay the Contractor upon submission of proper invoices or vouchers, the prices stipulated in this contract for service rendered and accepted. Progress payments shall be made only when authorized by the order. For time-and-materials orders, the Payments under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to time-and-materials orders placed under this contract. For labor-hour orders, the Payment under Time-and-Materials and Labor-Hour Contracts at FAR 52.212-4 (MAR 2009) (ALTERNATE I – OCT 2008) (DEVIATION I – FEB 2007) applies to labor-hour orders placed under this contract. 52.216-31(Feb 2007) Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition As prescribed in 16.601(e)(3), insert the following provision:*

*(a) The Government contemplates award of a Time-and-Materials or Labor-Hour type of contract resulting from this solicitation.*

*(b) The offeror must specify fixed hourly rates in its offer that include wages, overhead, general and administrative expenses, and profit. The offeror must specify whether the fixed hourly rate for each labor category applies to labor performed by—*

*(1) The offeror;*

*(2) Subcontractors; and/or*

*(3) Divisions, subsidiaries, or affiliates of the offeror under a common control.*

## **13. RESUMES**

*Resumes shall be provided to the GSA Contracting Officer or the user ordering activity upon request.*

## **14. INCIDENTAL SUPPORT COSTS**

*Incidental support costs are available outside the scope of this contract. The costs will be negotiated separately with the ordering activity in accordance with the guidelines set forth in the FAR.*

## **15. APPROVAL OF SUBCONTRACTS**

*The ordering activity may require that the Contractor receive, from the ordering activity's Contracting Officer, written consent before placing any subcontract for furnishing any of the work called for in a task order.*

## **16. DESCRIPTION OF IT PROFESSIONAL SERVICES AND PRICING**

### **SENIOR TECHNICAL MANAGER**

*Minimum/General Experience: Ten or more years of network experience. Excellent knowledge of systems engineering and architecture, CASE and IEF, and a variety of software and network applications. Wide range of development platform experience including Microsoft .net required with database experience. Excellent analytical, interpersonal, and oral and written communications skills also required.*

*Functional Responsibility: Provides systems engineering support to include identifying, analyzing and resolving highly complex problems, advising client personnel on software issues and solutions, designing systems architecture, systems and network operating systems and processes, management systems, infrastructure, workflow and applications. Determines requirements and develops plans to ensure smooth installation and documentation of new software and applications. Tracks problems and advises management of more serious problems and of trends in problems. Provides technical advice to less or senior systems engineers.*

*Minimum Education: MS in Computer Science or related degree. 6 years of equivalent experience can be substitute for degree requirements.*

### **SYSTEMS ANALYST**

*Minimum/General Experience: Seven or more years of systems design and integration experience in large, diversified system projects including at least three years in client/server technologies. Project planning and development, system installation and configuration, programming in a high level programming language, final testing, and documentation experience required. Knowledge of SQL, COTS, and network operating systems. Excellent interpersonal, communications, analytical and organizational skills also required.*

*Functional Responsibility: Identifies customer needs, defines functional requirements, and designs complex computer-based systems to meet specific customer requirements. Determines functional and cross-functional requirements, required tasks and their relationships. Defines critical project elements and resource requirements for design and programming efforts and creates timeline. Develops management and problem resolution systems, complex technical interfaces, and associated functions. Prepares required reports and documentation. Plans and delivers training and helps identify customer training needs. Trains and advises less senior technical staff.*

*Minimum Education: BS in computer science, information technology or related area required with advanced degree preferred. 4 years of equivalent experience can be substitute for degree requirements.*

### **APPLICATION PROGRAMMER**

*Minimum/General Experience: Two or more years computer programming experience. Systems design and integration experience in large, diversified system projects including Internet technologies. Programming, plans development, software installation and configuration, testing, and documentation experience within complex networked systems. Knowledge of SQL, Crystal Reports, SSR's and network O/S. Good interpersonal, communications, analytical and organizational skills.*

*Functional Responsibility: Designs, develops, documents, and programs complex computer-based systems. Identifies customer needs and designs systems to meet specific customer requirements. Develops systems, moderate to complex technical interfaces, and associated functions within a heterogeneous network system environment. Defines critical project elements and timelines within system design and programming*

efforts. Prepares required reports and documentation. Provides quality assurance through contact with customers. Recommends quality improvements to ensure superior quality, high value solutions are delivered.

Minimum Education: BS in computer science, information technology or related area required with advanced degree preferred.

## **PROJECT MANAGER**

Minimum/General Experience: 8 years of successful program management experience on large government technical contracts.

Functional Responsibility: The Project Manager serves as the contractor's contract manager, and shall be one of the contractor's authorized interface with the Government Contracting Officer (CO), the Contracting Officer's Technical Representative (COTR), government management personnel and customer agency representatives. Responsible for formulating and enforcing work standards, assigning contractor schedules, reviewing work discrepancies, supervising contractor personnel and communicating policies, purposes, and goals of the organization to subordinates. Shall be responsible for the overall contract. Maintain client contacts to ensure conformity to all contractual obligations. Ensure the development, maintenance, and implementation of work order management plans, a document which guides the performance of all functional activities performed on the individual task orders.

Minimum Education: Bachelors degree in Computer Sciences, Information Systems, Communications or related field. An advanced degree in Business, Law, Economics, Communication, Computer Science, or related discipline may be substituted for four years experience.

## **QA SPECIALIST**

Minimum/General Experience: 4 years of experience in verification and validation of software components. Knowledge of methods for testing, integration, and quality assessment of internally generated programming code.

Functional Responsibility: The Quality Assurance Specialist establishes and maintains a process for evaluating software and associated documentation. Determines the resources required for quality control. Maintains the level of quality throughout the software life cycle and conducts formal and informal reviews at pre-determined points throughout the development life cycle.

Minimum Education: A Bachelors degree in Computer Science, Information Systems, Engineering, Business or other related discipline. Degree requirements may be substituted for two years experience.

## **IMPLEMENTATION SPECIALIST**

Minimum/General Experience: Seven or more years of systems installation experience in mission critical systems. Must have demonstrated experience in planning for installation, deployment and change-over. Systems support life cycle documentation experience required. Excellent interpersonal, communications,

*analytical and organizational skills also required.*

*Functional Responsibility: The Implementation Specialist is responsible for planning and executing system installations, upgrades, patches and data conversion services. He/She works with customers to rapidly and securely migrate mission-critical business information, collaborates with customer's IT administrator to prepare a comprehensive implementation plan, then assesses their environment to determine the optimal migration solution. A replication strategy is custom-tailored to the customer's specific business needs. Detailed implementation and data validation methods are documented for review and approval prior to execution. Also provides verification of the integrity and operational readiness of migrated data; delivers clear, concise documentation outlining the new configuration; and conducts a brief operational forum to familiarize customer's staff with new data layout.*

*Minimum Education: Bachelors degree in Computer Sciences, Information Systems, Communications or related field, with over 6 years of systems deployment and/or customer service experience. Degree requirements may be substituted for 4 additional years experience.*

### **SUBJECT MATTER EXPERT**

*Minimum/General Experience: Minimum of 6 years of directly related specialized experience or publications, three (3) of which shall be within the last five (5) years. Demonstrated leader in specialty area including relevant industry recognition/certification.*

*Functional Responsibility: Subject Matter Experts shall be responsible for the design, implementation and analysis of discrete elements of a program. Provide leadership and guidance to policy development, authorship of final reports, presentations to high level managers and Congress, and other program elements that require expertise. The Subject Matter Expert must be a recognized leader in his or her field.*

*Minimum Education: Master's degree in a field related to his or her expertise or equivalent experience.*

### **SOFTWARE ENGINEER**

*Minimum/General Experience: This position requires a minimum of six years on large-scale data base management systems. Knowledge of computer equipment, object-oriented programming, and the ability to develop complex software to satisfy design objectives desired.*

*Functional Responsibility: The Software Engineer develops applications from design specifications for functional activities. Develops block diagrams and logic flow charts. Translates detailed design into computer software. Tests, debugs, and refines the computer software to produce the required product. Prepares required documentation, including both program-level and user-level documentation. Enhances software to reduce operating time or improve efficiency. Provides technical direction to programmers to ensure program deadlines are met.*

*Bachelors degree in Computer Science, Information Systems, Engineering, Business, or other related degree or equivalent experience.*

<b>Labor Category Title</b>	<b>GSA Pricing – (Contractor Site- Hourly Rates)</b>
<b>Subject Matter Expert</b>	<b>\$175.68</b>
<b>Implementation Specialist</b>	<b>\$175.68</b>
<b>Senior Technical Manager</b>	<b>\$175.68</b>
<b>Project Manager</b>	<b>\$175.68</b>
<b>System Analyst</b>	<b>\$175.68</b>
<b>Software Engineer</b>	<b>\$175.68</b>
<b>QA Specialist</b>	<b>\$175.68</b>
<b>Application Programmer</b>	<b>\$175.68</b>

## **ATTACHMENT I**

### **Gyrus License Agreement**

This Software License Agreement (“Agreement”) is entered into as of the date executed below (the “Effective Date”) between Manan, LLC DBA Gyrus Systems (“Gyrus”) with principal offices at 5400 Glenside Drive – Suite B, Henrico Virginia 23228 and GSA Customer (hereafter “Customer”)

In consideration of the mutual promises and upon the terms and conditions set forth below, the parties agree as follows:

#### **1. Definitions**

1.1. "Documentation" means any help files, instruction manuals, operating instructions, user manuals, user guides, training manuals and specifications provided by Gyrus which describe the use of the Software and which either accompany the Software or are provided or made available to Customer.

2. "Equipment" means the computer system, including peripheral equipment and operating system software, specified in the Documentation.

1.3. "Active Student" is defined as any person stored in the Software database who has had any training activity, including enrollment, pending enrollment, eLearning, wait listing, and cancellation, during the term of the license period, for twelve months prior to the license period, or who has any future training activity scheduled, regardless of whether the person is actively using the Software at any given time.

1.4. “Releases” shall mean released versions, if any, to the Software. “Major Releases” involve additions of substantial functionality while “Minor Releases” do not. Major Releases are designated by a change in the number to the left of the decimal point of the number appearing after the Software name while Minor Releases are designated by a change in such number to the right of the decimal point. Gyrus is the sole determiner of the availability and designation of an update as a Major Release or Minor Release. Major Releases exclude software releases which are reasonably designated by Gyrus as new Software. Where used herein "Releases" shall mean Major Releases or Minor Releases or both as the context requires.

1.5. “Software” means computer programs and database schemas in any form as described in the GSA Schedule Contract and the GSA Schedule Pricelist.

1.6. "Site" means each physical location that hosts the Software.

1.7. “Third Party Component” will mean any component of the Software, as listed in Gyrus’ Documentation, provided by a third party to Gyrus and used as a component of the Software.

#### **2. Delivery and License**

2.1. *Delivery.* Delivery shall be pursuant the GSA Customer Purchase Order (“Order”) and the underlying GSA Schedule Contract.



### 3. License

3.1. *Grant of License.* Subject to the terms and conditions of this Agreement, upon Delivery, Gyrus grants Customer and Customer accepts a non-exclusive, non-transferable (except as expressly provided for below) license to install and use the Software solely for Customer's own internal use (unless terminated as expressly provided for in the Federal Acquisition Regulation ("FAR"), the GSA Schedule Contract and/or any applicable Orders. Renewal shall require execution of a new or modified Purchase Order. A separate license is required for each database server on which the Software will be used. Customer's license to use the Software is limited to the number of Active Students stated in any applicable Order(s).

3.2. *License Renewals* . Gyrus will send an invoice within sixty (60) days prior to expiration.

3.3. *Failure to Comply.*

3.4. *Copies.* Customer will be entitled to make a reasonable number of binary copies of the Software for backup or archival purposes only. Customer may make a reasonable number of copies of the Documentation for internal use. Customer may not copy the Software, except as permitted by this Agreement. Whenever Customer is permitted to copy or reproduce all or any part of the Software, all titles, trademark symbols, copyright symbols and legends, and other proprietary markings must be reproduced.

3.5. *License Management Software.* Subject to Government security requirements, Gyrus reserves the right to use license management software to limit and monitor Customer's use of the Software to the limits stated in this Agreement. Customer will not circumvent or attempt to circumvent such license management software.

3.6. *Additional Active Students.* By a new or modified Order, the parties may add additional Active Students to this Agreement. Upon such new or modified Order, the additional Active Students will thereafter be included in "Software" under this Agreement.

4. License Restrictions. Customer agrees not to: (a) sell, lease, license or sublicense the Software or the Documentation; (b) decompile, disassemble, or reverse engineer the Software, in whole or in part; (c) write or develop any derivative software or any other software program based upon the Software or any Confidential Information; (d) use the Software to provide services on any ASP, software-as-a-service or service bureau basis; or (e) use, copy, exploit, or permit use of the Software except as expressly authorized in this Agreement.

5. Ownership. This Agreement grants a license only and transfers to Customer no ownership interest.

### 6. Payment

6.1. License Fee; Other Amounts. Fees shall be in accordance with the negotiated Order based on GSA Schedule Pricelist. Payment shall be in accordance with FAR 52.212-4, the Order and the GSA Schedule Contract.

6.2. Taxes. Taxes are subject to FAR 52.212-4(k) which provides that the contract price shall include all federal, state and local taxes and duties. GYRUS shall state separately on its invoices, taxes excluded

from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to GYRUS or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

7. Support Services. Maintenance and support services are included in the Annual Maintenance License Fees as stated in an applicable Order. Customer will be entitled to maintenance and support services ("Support Services") for the Software as stated in Exhibit A.

## 8. Limited Warranty

8.1. Gyrus warrants that for a period of ninety (90) days from the GSA Customer's acceptance of the Software in accordance with the FAR and the GSA Schedule Contract (the "Warranty Period") (a) the Software will perform in substantial accordance with the Documentation and (b) the media on which the Software is distributed will be free from defects in materials and workmanship under normal use. If during the Warranty Period the Software or the media on which it is distributed do not perform as warranted (a "Non-Conformity"), Gyrus shall undertake to correct such Non-Conformity, or if correction is not reasonably possible, replace such Software or the media free of charge. If neither of the foregoing is commercially practicable, Gyrus shall terminate this Agreement and refund to Customer the License Fee. The foregoing are Customer's sole and exclusive remedies for breach of this limited warranty. The warranty set forth above is made to and for the benefit of Customer only. The warranty will apply only if:

8.1.1. The Software has been properly installed and used at all times and in accordance with the instructions for use; and

8.1.2. No modification, alteration or addition has been made to the Software by persons other than Gyrus or Gyrus' authorized representative, except as authorized in writing by Gyrus.

## 9. Exclusion and Limitations

9.1. *Warranty Exclusion.* EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GYRUS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, UNDER THIS AGREEMENT. GYRUS SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THE SOFTWARE IS LICENSED "AS IS." NO WARRANTY IS MADE REGARDING THE RESULTS OF THE SOFTWARE, THAT ALL ERRORS IN THE PROGRAMS WILL BE CORRECTED, NOR THAT THE SOFTWARE'S FUNCTIONALITY WILL MEET CUSTOMER'S REQUIREMENTS. GYRUS SHALL HAVE NO LIABILITY FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES, INCLUDING LOSS OF DATA AND LOST PROFITS, (EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM THIS AGREEMENT OR THE DELIVERY, INSTALLATION, OR USE OF THE SOFTWARE OR ANY RELATED SERVICES. CUSTOMER AGREES THAT GYRUS' LIABILITY IN CONNECTION WITH THE SOFTWARE, WHETHER ARISING IN CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR ANY OTHER LEGAL THEORY SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO GYRUS FOR THE SOFTWARE FOR THE CURRENT ANNUAL LICENSE TERM.

9.2. *Limitation of Liability.* In no event will Gyrus be liable for any loss of profits, loss of use, business interruption, loss of data, cost of cover or indirect, special, incidental or consequential damages even if Gyrus has been advised of the possibility of such damages. Gyrus will not be liable for any damages caused by delay in delivery or furnishing the Software or services. Gyrus' liability under this Agreement for damages of any kind will not, in any event, exceed the License Fees paid by Customer to Gyrus under this Agreement. The foregoing exclusions/limitations of liability shall not apply (1) to personal injury or death caused by GYRUS' negligence; (2) for fraud; (3) for express remedies under the contract; or (4) for any other matter for which liability cannot be excluded by law.

## 10. Intellectual Property Warranty and Indemnification

10.1. *IP Warranty.* Gyrus warrants to Customer that it has sufficient rights to the Software to provide the license grants and fulfill its other obligations under the terms of this Agreement.

10.2. *Infringement Indemnity.* Gyrus may elect to hold harmless Customer from any action brought against it to the extent that it is based on a claim that the Software infringes any patents, trademarks, copyrights, trade secrets, licenses, or other property right ("Claims"). Customer shall immediately notify Gyrus in writing of such claim. Gyrus will be given an opportunity to intervene in any suit or claim filed against the GSA Customer, at its own expense, through counsel of its choosing. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

10.4. *Limitation of Indemnification.* The obligations set forth in Section 10.2 will not apply to, and Gyrus assumes no liability for, any Claims to the extent arising from (i) use of a modified version of the Software, (ii) the combination, operation or use of the Software with non-Gyrus programs, data, methods or technology, if such infringement would have been avoided without the combination, operation or use of the Software with other programs, data, methods or technology, or (iii) unlicensed use of the Software.

10.6. *Actions by Gyrus.* In the event any such infringement, Claim, action or allegation is brought or threatened or if Gyrus deems that there is a material risk of a Claim, Gyrus may, at its sole option and expense:

10.6.1. work with the Government to procure for Customer the right to continue its use of the Software; or

10.6.2. modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable,

10.6.3. terminate this Agreement and repay to Customer a portion, if any, of the License Fee equal to such fee less depreciation of the Software as provided in U.S. Department of Treasury regulations.

10.7. *Exclusive Remedy.* This Section 10 states the entire liability of Gyrus and Customer's exclusive remedy with respect to actual or alleged infringement of any patent, copyright, trade secret or other proprietary right.

## 11. Confidentiality

11.1. "Confidential Information" means non-public information, technical data or know-how of a party and/or Gyrus' Subsidiaries, which is furnished to the other party in written or tangible form in connection with this Agreement. Oral disclosure will also be deemed Confidential Information if it is confirmed at the time of disclosure to be confidential. All Confidential Information shall be marked.

11.2. Notwithstanding the foregoing, Confidential Information does not include information which is: (i) already in the possession of the receiving party and not subject to a confidentiality obligation to the providing party; (ii) independently developed by the receiving party; (iii) publicly disclosed through no fault of the receiving party; (iv) rightfully received by the receiving party from a third party that is not under any obligation to keep such information confidential; (v) approved for release by written agreement with the disclosing party; or (vi) disclosed pursuant to the requirements of federal law, regulation, or court order.

11.3. Neither party will use the other party's Confidential Information during the term of this

Agreement except as reasonably required for the performance of this Agreement. In addition, the confidentiality obligations set forth in this Section 11 will survive for five (5) years after the

termination or expiration of this Agreement. Each party will hold in confidence the other party's Confidential Information by means that are no less restrictive than those used for its own confidential materials. Each party agrees not to disclose the other party's Confidential Information to anyone other than its employees, agents, consultants and/or independent contractors (collectively referred to as "personnel," hereinafter) or subcontractors who are bound by confidentiality obligations and who need to know the same to perform such party's obligations hereunder. In case a party receives legal process that demands or requires disclosure of the disclosing party's Confidential Information, such party will give prompt notice to the disclosing party, if legally permissible, to enable the disclosing party to challenge such demand. Gyrus recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, and that information that does not fall under certain exceptions must be released when requested despite being characterized as "confidential" by vendor. When the end user is an instrumentality of the U.S. Government, neither this EULA nor the Schedule Pricelist shall be deemed "Confidential Information" notwithstanding marking to that effect. Notwithstanding anything in this Agreement to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bona fide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Agreement.

## 12. Verification of Proper Use ; Audit

12.1. Gyrus by its personnel and subject to Government security requirements may audit, with thirty (30) days' prior written notice, Customer's available records related to the use of the Software, to verify that Customer's use of the Software is in accordance to the constraints of this Agreement. Gyrus will bear the expense. As long as Gyrus complies with Customer's security requirements, audits will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business. Audits will be conducted no more than once in any twelve-month period.

## 13. Term and Termination

13.1. *Term.* This Agreement will be for an "Initial Term" of 12 months from the Effective Date. This Agreement will remain in force until terminated in accordance with the FAR, the underlying GSA Schedule Contract and any applicable Order(s).

13.2. *Termination.*

When the end user is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be made as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Gyrus shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

13.3. Effect of Termination. All licenses terminate upon termination of this Agreement. . Within fourteen (14) days after the date of termination or discontinuance of this Agreement, Customer shall erase or destroy all copies of the Software and the Documentation and all Confidential Information in its possession. Upon request, Customer shall furnish Gyrus with a certificate signed by a representative of Customer verifying that the same has been done. The following provisions will survive termination: 5 (Ownership), 9 (Exclusions and Limitations), 10 (Intellectual Property and Indemnification), 11 (Confidentiality), 13 (Verification Audit), 14.3 (Effect of Termination) and 17 (Miscellaneous).

14. Assignment

14.1 Customer may not assign this Agreement or the license to a competitor of Gyrus.

14.2. Assignment by Gyrus is subject to FAR 52.232-23 "Assignment of Claims" (Jan. 1986) and FAR subpart 42.12 "Novation and Change-of-Name Agreements" (Sep. 2013).

14.3 The terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties to this Agreement and to their respective heirs, successors, and assigns.

15. Miscellaneous

15.1. *Notice.* Any notice required or permitted under the terms of this Agreement or required by federal law must be in writing and must be (a) delivered in person, (b) sent by first class registered mail as appropriate, (c) sent by overnight air courier, or (d) transmitted by facsimile, in each case properly posted to the appropriate address set forth in an applicable Order. Either party may change its address by notice to the other party given in accordance with this Section. Notices are effective on receipt.

15.2. *Force Majeure.* Pursuant to FAR 52.212-4(f), the parties shall be liable for default unless nonperformance is caused by an occurrence beyond its reasonable control and without its fault or negligence such as acts of God, or the public enemy, acts of Government in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather and delays of common carriers. The party claiming a force majeure event shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

15.3. *Waiver.* Any waiver of the provisions of this Agreement or of a party's rights or remedies under

this Agreement must be in writing to be effective. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. Except as expressly stated in this Agreement, no exercise or enforcement by either party of any right or remedy under this Agreement will preclude the enforcement by such party of any other right or remedy under this Agreement or that such party is entitled by law to enforce.

15.4. *Severability.* If any term, condition, or provision in this Agreement is found to be invalid, unlawful or unenforceable the remaining terms, conditions and provisions, will continue to be valid and enforceable to the fullest extent permitted by law.

15.5. *Amendments to This Agreement.* This Agreement may not be amended, except by a writing signed by both parties.

15.6. *Export of Software.* Customer may not export or re-export this Software without the prior written consent of Gyrus and without compliance with applicable U.S. export control laws.

15.7. *Governing Law and Jurisdiction.* When the end user is an instrumentality of the U.S. Government, this is a contract with the U.S. Government and is subject to Federal law including the FAR. Venue and jurisdiction of any disputes are determined by the applicable federal statute (Contract Disputes Act, Federal Tort Claims Act, etc.). This Agreement is not subject to the United Nations Convention of Contracts for the International Sale of Goods.

15.8. *Public Announcements.* Any and all publicity is subject to GSAR 552.203-71.

15.9. *Counterparts.* This Agreement may be executed in counterparts, each of which will be deemed an original and all of which together will constitute one instrument. Execution by fax is permitted.

15.10. *Entire Agreement.* This Agreement, the underlying GSA Schedule Contract, the GSA Schedule Pricelist and any applicable GSA Customer Purchase Orders constitute the entire

understanding and agreement of the parties. This Agreement, however shall not take

precedence over the terms of the underlying GSA Schedule Contract or any specific, negotiated terms on the GSA Customer's Purchase Order.

IN WITNESS WHEREOF, the parties have executed this Agreement.

MANAN, LLC. D/B/A GYRUS SYSTEMS

GSA CUSTOMER:

By: \_\_\_\_\_ By: \_\_\_\_\_

Name: Viren Kapadia \_\_\_\_\_ Name: \_\_\_\_\_

Title: President \_\_\_\_\_ Title: \_\_\_\_\_

Date: \_\_\_\_\_ Date: \_\_\_\_\_

## **Exhibit A-Support Services**

1. Hours of Operation. Monday—Friday 8:00AM—5:00PM Eastern Time excluding holidays.
2. Contact Information. [Support@gyrus.com](mailto:Support@gyrus.com). 800 284-9787.
3. Gyrus will provide Customer with telephone support and access to the Customer knowledge base via the web site. Gyrus' goal is to have a qualified Technical Support Analyst respond to Customer's support requests within one (1) business day. However, there is no guarantee that every problem will be resolved during that time.
4. Upon installation, upgrades shall be deemed part of the Software, subject to all terms of this License. Upgrades do not include complimentary, supplementary, and third party software.
5. Gyrus will provide reasonable assistance to answer technical questions about the Software that cannot be answered by reference to user manuals and documentation.
6. Gyrus makes no warranties and disclaims all implied warranties with respect to Support.
7. For Customers electing not to install upgrades of the Software, Gyrus commits to support the older version of the Software for six (6) months after the upgrade is offered.
8. Support does not include training, systems analysis, SCORM integration, report writing, consulting, implementation, assistance with products not licensed by Gyrus, customization, professional service relating to specialized uses, custom applications, and the like.
9. Support does not cover, and Gyrus shall have no responsibility with respect to fixes, upgrades, or enhancements by Customer or third-party vendors. Gyrus has the right to discontinue support without a refund if the Customer makes any modifications to the Software, uses derivatives of the Software, including non-Gyrus applications, or uses any second or third party application that modifies the data in the Software database without the prior written consent of Gyrus.
10. Gyrus is not responsible for any loss of Customer data. Customer agrees that it is their responsibility to make regular data backups and to maintain and test data recovery procedures.
11. Support Services includes, during Gyrus' standard hours of service: (i) Major Releases and Minor Releases with related Documentation, and (ii) email and telephone assistance for the Software, including (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance in the operation of the Software; and (d) error verification, analysis and correction to the extent possible by telephone.
12. Support Services will not include services requested as a result of, or with respect to, causes which are not attributable to Gyrus.
13. As a condition of Support Services, Customer shall properly train its personnel in the use and application of the Software and deal with Gyrus through such trained personnel.